National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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Press Release (R-2565): Patricia Gilbert is Names NLRB Acting Director of Information

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Albertson's, Inc. (28-RC-6300; 344 NLRB No. 158) El Paso, TX Aug. 12, 2005. The Board held that the hearing officer erred in overruling the Employer's Objection 1, which alleged that Food & Commercial Workers Local 540 affected the election by distributing a fake letter, forged on Albertson's letterhead, claiming the existence of a company plan to convert all nonunion stores in various locations to price-impact Super Saver stores, potentially resulting in job loss and reduction in wages and benefits for current employees. The Board sustained Objection 1, set aside the election held at Store No. 1016 on August 24, 2004, and directed a second election. It found it unnecessary to pass on the hearing officer's recommendation to overrule the Employer's remaining objections. The tally of ballots showed five for and three against the Union, with one challenged ballot, an insufficient number to affect the results. [HTML] [PDF]

In recommending that the Employer's objection to the forged document be overruled, the hearing officer rejected the Employer's contention, based on *Mt. Carmel Medical Center*, 306 NLRB 1060 (1992), that the distribution of a forged document during an election campaign was a per se violation requiring that the election be set aside. Instead, the question to be addressed is whether voters were "unable to recognize propaganda for what it was." *Midland National Life Ins. Co.*, 263 NLRB 127, 133 (1982). The hearing officer found that the letter on its face was an obvious forgery and thus, a reasonable Albertson's employee would have recognized the letter for what it was, i.e., campaign propaganda favoring the Union, prepared by someone other than Albertson's. In addition, the hearing officer found that the Employer's response was sufficient to expose the forgery and allow employees to recognize the letter for what it was.

While the Board agreed that *Mt. Carmel* did not establish a per se ruling requiring that an election be set aside because of a forged document, it disagreed with the hearing officer that a reasonable Albertson's employee, under these circumstances, would have been able to recognize the forgery for what it was. The Board found that the Employer's attempts to reveal the letter as a forgery were insufficient to mitigate the effects that the forged letter had on employee free choice. It wrote: "The nature and contents of the letter, the Union's role in its distribution, and the Union's decision to remain silent rather than inform employees of the forgery all prevented employees from reasonably recognizing the letter as a forgery, despite the Employer's efforts. As such, in the particular circumstances of this case, we believe this letter is the kind of forgery that according to *Midland National*, warrants the Board's intervention."

The Union petitioned for a single unit comprised of all meat department employees at five Albertson's stores in El Paso. The Regional Director found the scope of the petitioned-for unit inappropriate and directed individual elections at the five stores. The Employer objected only to conduct as it affected the election at Store No. 1016.

(Chairman Battista and Members Liebman and Schaumber participated.)

Alexander Painting, Inc. and Silver Palette, Inc. (4-CA-32867, et al.; 344 NLRB No. 157) Bethlehem, PA Aug. 9, 2005. The Board affirmed the administrative law judge's findings that the Respondents violated Section 8(a)(5) of the Act by: failing to make required contributions to the welfare, pension, annuity, vacations, scholarships, and education funds of Painters District 21; withdrawing recognition from the Union as the collective-bargaining representative of the employees in the appropriate bargaining unit; bypassing the Union as the exclusive representative of the employees in the bargaining unit and dealing directly with those employees over their terms and conditions of employment; failing and refusing to furnish the Union with requested information; and failing and refusing to abide by provisions of their collective-bargaining agreement with the Union by failing to use the Union's exclusive hiring hall when hiring bargaining unit employees. [HTML] [PDF]

The judge found no merit to the allegation that the Respondents violated Section 8(a)(5) by failing to transmit dues to the Union from September 3, 2003, to February 23, 2004. He concluded that there was neither an admission by the Respondents, nor any evidence, that supported a finding that the Respondent failed to transmit dues during the period alleged.

Contrary to the judge, the Board found that the Respondent failed to transmit dues to the Union during the relevant period. It stated that the record showed that Respondent Alexander Painting filed a Statement of Financial Affairs in its Chapter 7 bankruptcy proceeding, including a document titled "Schedule E—Creditors Holding Unsecured Priority Claims" that lists the Union as a creditor for dues owed for January 2004, and further states that dues are owed under a note dated December 16, 2003.

In further support of the Board's finding, Chairman Battista wrote that the Respondent's answer to the "dues" allegation of the complaint admitted that they "failed to make certain payments" and only "denied that this amounts to an unfair labor practice." Accordingly, the answer establishes the factual basis for the violation, and the Respondents failed to offer a valid defense.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Painters District Council 21; complaint alleged violation of Section 8(a)(3) and (5). Hearing at Pittsburgh on Sept. 14, 2004. Adm. Law Judge David L. Evans issued his decision Nov. 29, 2004.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Tri-Pak Machinery, Inc. (Electrical Workers [IBEW] Local 1015) Harlingen, TX August 8, 2005. 16-CA-24112; JD(ATL)-33-05, Judge George Carson II.

Crossing Recovery Systems, Inc. d/b/a Crossing Rehabilitation Services (Novelty Workers Local 298) Islip Terrace, NY August 8, 2005. 29-CA-26118, et al.; JD(NY)-36-05, Judge Howard Edelman.

TNT Logistics North America, Inc. (Auto Workers [UAW]) Janesville, WI August 9, 2005. 30-CA-16801-1; JD-63-05, Judge Martin J. Linsky.

Teamsters Local 81 (an Individual) Portland, OR August 5, 2005. 36-CB-2567-1; JD(SF)-57-05, Judge Gerald A. Wacknov.

Land-O-Sun Dairies d/b/a Pet Dairy (Teamsters Local 549) Kingsport, TN August 10, 2005. 10-CA-35522; JD(ATL)-34-05, Judge George Carson II.

WGE Federal Credit Union (Office Employees [OPEIU] Local 1) Muncie, IN August 10, 2005. 25-CA-29101; JD(ATL)-27-05, Judge Lawrence W. Cullen.

Carpenter Technology Corp. (Steelworkers) Reading, PA August 11, 2005. 4-CA-33564, 33744, 4-RC-20898; JD-62-05, Judge Robert A. Giannasi.

AG Communication Systems Corp. and Lucent Technologies (Electrical Workers [IBEW] Local 21) Chicago, IL August 12, 2005. 33-CA-14450; JD-65-05, Judge Arthur J. Amchan.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Architectural Contractors Trade Assn., Farmington Hills, MI, 7-RC-22466, August 10, 2005 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND ORDER REMANDING [to Regional Director to arrange a hearing before a hearing officer to resolve issues raised by Employer's Objection 3]

S.T.A.R., Inc., Lighting the Way, Norwalk, CT, 34-RC-2111, August 10, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

USF Dugan, Inc., Columbia, MO, 17-RC-12364, August 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Reuther Material Company, Inc. and Reuther Trucking Corp., North Bergen, NJ, 22-RC-1409, August 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND DIRECTION [that Regional Director open and count ballots]

Dreyer's Grand Ice Cream, Inc., Stockton, CA, 32-RC-5329, August 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

St. Joseph Healthcare Center, Hamtramck, MI, 7-UC-586, August 10, 2005 (Chairman Battista and Member Schaumber; Member Liebman dissenting)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Heartland Health Care Center-Fostrian, Flushing, MI, 7-RC-22873, August 10, 2005 (Chairman Battista and Members Liebman and Schaumber)

PonderaMedical Center, Conrad, MI, 19-RC-14745, August 10, 2005 (Chairman Battista and Member Schaumber; Member Liebman dissenting)

Miscellaneous Board Orders

CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938

- Goodhue County, Red Wing, MN, 18-WH-9, August 12, 2005 (Chairman Battista and Members Liebman and Schaumber)
- *Goodhue County*, Red Wing, MN, 18-WH-10, August 12, 2005 (Chairman Battista and Members Liebman and Schaumber)
- *Pope County*, Glenwood, MN, 18-WH-8, August 12, 2005 (Chairman Battista and Members Liebman and Schaumber)
